

§ 1090.2

and during which the trailer or container is not unloaded.

[52 FR 23660, June 24, 1987]

§ 1090.2 Exemption of rail and highway TOFC/COFC service.

Except as provided in 49 U.S.C. 10505 (e) and (g), 109229(1), and 10530, rail TOFC/COFC service and highway TOFC/COFC service provided by a rail carrier either itself or jointly with a motor carrier as part of a continuous intermodal freight movement is exempt from the requirements of 49 U.S.C. subtitle IV, regardless of the type, affiliation, or ownership of the carrier performing the highway portion of the service. Motor carrier TOFC/COFC pickup and delivery services arranged independently with the shipper or receiver (or its representative/agent) and performed immediately before or after a TOFC/COFC movement provided by a rail carrier are similarly exempt. Tariffs heretofore applicable to any transportation service exempted by this section shall no longer apply to such service. The exemption does not apply to a motor carrier service in which a rail carrier participates only as the motor carrier's agent (Plan I TOFC/COFC), nor does the exemption operate to relieve any carrier of any obligation it would otherwise have, ab-

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sent the exemption, with respect to providing contractual terms for liability and claims.

[54 FR 51746, Dec. 18, 1989]

§ 1090.3 Use of TOFC/COFC service by motor and water carriers.

(a) Except as otherwise prohibited by these rules, motor and water common and contract carriers may use rail TOFC/COFC service in the performance of all or any portion of their authorized service.

(b) Motor and water common carriers may use rail TOFC/COFC service only if their tariff publications give notice that such service may be used at their option, but that the right is reserved to the user of their services to direct that in any particular instance TOFC/COFC service not be used.

(c) Motor and water contract carriers may use rail TOFC/COFC service only if their transportation contracts and tariffs (for water carriers) make appropriate provisions therefor.

(d) Tariffs of motor and water common or water contract carriers providing for the use of rail TOFC/COFC service shall set forth the points between which TOFC/COFC service may be used.

[52 FR 27811, July 24, 1987]